

LOURDES A. LEON GUERRERO
GOVERNOR



JOSHUA F. TENORIO
LT. GOVERNOR

UFISINAN I MAGA'HÅGAN GUÅHAN
OFFICE OF THE GOVERNOR OF GUAM

Transmitted via email to: speaker@guamlegislature.org

July 12, 2023

HONORABLE THERESE M. TERLAJE, *Speaker*

I Mina'trentai Siette Na Liheslaturan Guåhan

37th Guam Legislature

Guam Congress Building

163 Chalan Santo Papa

Hagåtña, Guam 96910

Re: Substitute Bill No. 101-37 (COR) - AN ACT TO REPEAL AND REENACT § 1310 OF ARTICLE 3, CHAPTER 1, TITLE 22 GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO ADOPTING UPDATED EMISSION STANDARDS FOR SULFUR OXIDES FROM FUEL COMBUSTION TO ENSURE THE ISLAND OF GUAM MEETS THE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR SULFUR DIOXIDE BY THE GUAM ENVIRONMENTAL PROTECTION AGENCY

Håfa Adai Madame Speaker,

For the reasons provided below, Substitute Bill No. 101-37 (COR) will lapse into law without my signature. While my Administration supports this legislation's general intent to create more stringent emission standards for sulfur oxides from fuel combustion to ensure Guam meets National Ambient Air Quality Standards, this legislation seeks to amend regulations. Pursuant to 10 GCA § 49104(n), (o) amendments to *Guam Air Pollution Control Standards and Regulations* could have been properly accomplished through formal rulemaking by the Guam Environmental Protection Agency ("GEPA")—the agency charged with implementing regulations to meet the requirements of the Clean Air Act. *Id.*

Under the separation of powers doctrine, each branch of government must operate in distinct, clearly defined spheres. The Organic Act of Guam charges the Executive Branch with powers to issue "regulations" not in conflict with any applicable law, including Guam's rulemaking laws. Conversely, the Legislature is charged with drafting and passing "bills." Rulemaking and law-making are separate and distinct roles as provided by the Organic Act of Guam. The separation of powers doctrine would prohibit legislation that amends executive rules and regulations, just as it would prohibit an agency from amending legislative enactments.

Substitute Bill No. 101-37's proposed amendments to Guam's Administrative Rules and Regulations infringe on well-established principles. While it is within the Legislature's authority to pass a bill containing the provisions in Sub. Bill No. 101-37, once the Legislature delegates rule-

To: Therese M. Terlaje, *Speaker*, 37th Guam Legislature
Fr: Lourdes A. Leon Guerrero, *Governor of Guam*
Date: July 12, 2023
Re: Substitute Bill No. 101-37 (COR) nka P.L. 37-29

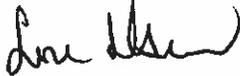
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making authority to an agency, as it has with GEPA, it must honor such delegation and not interfere with agency rulemaking unless otherwise rescinded.

I thank GEPA and the Legislature for their efforts in preparing legislation with the intention of bringing Guam into compliance with national standards and for protecting our people, marine life and environment. However, clearly, Substitute Bill No. 101-37 seeks to perform an executive function and likely will result in an ineffective measure that cannot be ratified with my signature. To ensure that these important regulations are properly implemented, I direct GEPA to begin the formal rulemaking process to perfect the amendment sought in Substitute Bill No. 101-37. This will ensure the rule will survive possible challenges to its validity and, ultimately, best achieve the agency's mission.

For the reasons noted above, Substitute Bill No. 101-37 (COR) will lapse into law without my signature.

Senseramente,



LOURDES A. LEON GUERRERO

Maga'hāgan Guāhan

Governor of Guam

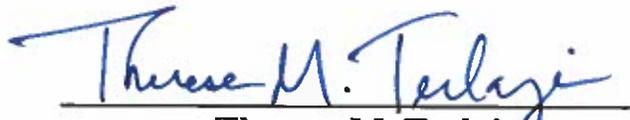
Enclosure: Substitute Bill No. 101-37 (COR) nka P.L. 37-29 (LAPSE)

cc via email: *Honorable* Joshua F. Tenorio, *Sigundo Maga'lāhen Guāhan*, Lt. Governor of Guam
Compiler of Laws

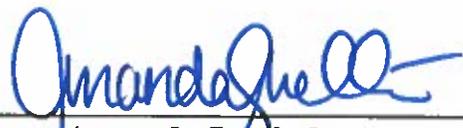
I MINA'TRENTAI SIETTE NA LIHESLATURAN GUÅHAN
2023 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'HÅGAN GUÅHAN*

This is to certify that **Substitute Bill No. 101-37 (COR)**, “**AN ACT TO REPEAL AND REENACT § 1310 OF ARTICLE 3, CHAPTER 1, TITLE 22 GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO ADOPTING UPDATED EMISSION STANDARDS FOR SULFUR OXIDES FROM FUEL COMBUSTION TO ENSURE THE ISLAND OF GUAM MEETS THE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR SULFUR DIOXIDE BY THE GUAM ENVIRONMENTAL PROTECTION AGENCY,**” was on the 30th day of June 2023, duly and regularly passed.


Therese M. Terlaje
Speaker

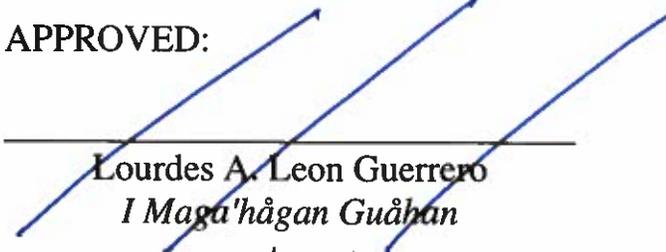
Attested:


Amanda L. Shelton
Legislative Secretary

This Act was received by *I Maga'hågan Guåhan* this 30th day of June
2023, at 6:57 o'clock P.M.


P03 ccchong 562
Assistant Staff Officer
Maga'håga's Office

APPROVED:


Lourdes A. Leon Guerrero
I Maga'hågan Guåhan

Date: 7/12/2023

Public Law No. 37-29

RCVD AT CENTRAL FILE
JUL 8 '23 AM 10:51

2023-19471

Jessica Dydascc

I MINA'TRENTAI SIETTE NA LIHESLATURAN GUÅHAN
2023 (FIRST) Regular Session

Bill No. 101-37 (COR)

As amended by the Committee on
Environment, Revenue and Taxation,
Labor, Procurement, and Statistics,
Research and Planning; and substituted
and further amended on the Floor.

Introduced by:

Sabina Flores Perez
Telo T. Taitague
Chris Barnett
Joanne Brown
Frank Blas, Jr.
Thomas J. Fisher
Christopher M. Dueñas
Jesse A. Lujan
Tina Rose Muña Barnes
William A. Parkinson
Roy A.B. Quinata
Joe S. San Agustin
Dwayne T.D. San Nicolas
Amanda L. Shelton
Therese M. Terlaje

**AN ACT TO REPEAL AND REENACT § 1310 OF
ARTICLE 3, CHAPTER 1, TITLE 22, GUAM
ADMINISTRATIVE RULES AND REGULATIONS,
RELATIVE TO ADOPTING UPDATED EMISSION
STANDARDS FOR SULFUR OXIDES FROM FUEL
COMBUSTION TO ENSURE THE ISLAND OF GUAM
MEETS THE NATIONAL AMBIENT AIR QUALITY
STANDARDS FOR SULFUR DIOXIDE BY THE GUAM
ENVIRONMENTAL PROTECTION AGENCY.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that the Clean Air Act requires compliance with the National Ambient Air Quality
4 Standards (NAAQS) for criteria air pollutants which currently includes sulfur
5 dioxide (SO₂), carbon monoxide (CO), nitrogen dioxide (NO₂), ozone (O₃), lead
6 (Pb), and particulate matter (PM_{2.5} and PM₁₀). Furthermore, those areas not in
7 compliance with and not attaining NAAQS levels are designated by the United
8 States Environmental Protection Agency (USEPA) as nonattainment areas for the
9 particular pollutant(s).

10 *I Liheslatura* further finds that the USEPA designated two (2) nonattainment
11 areas on Guam. The Piti-Cabras area of Guam was designated as not attaining the
12 2010 SO₂ Primary NAAQS on January 9, 2018. The area of nonattainment is a
13 6.074-kilometer radius area from a point between Units 1 and 2 and Units 3 and 4 of
14 the Guam Power Authority (GPA) Cabras Station. The other nonattainment area is
15 a 3.5 kilometer or 2.2-mile radius area from the Tanguisson power plant, although
16 the plant is no longer operating.

17 *I Liheslatura* finds, as required by Part D of the Clean Air Act, that Guam is
18 required to show that it will be in attainment by the year 2023. To this end, the Guam
19 Environmental Protection Agency (GEPA) has completed the baseline emissions
20 inventory for 2020. In 2020, the emission inventory for SO₂ for Guam was 9197.04
21 tons. The estimated emissions inventory for SO₂ in 2025 is 3.336 tons - a reduction
22 of 9,193.704 tons per year of SO₂. Once GPA has commissioned the new combined
23 cycle power plant and decommissioned Cabras 1 and 2, Guam will be in full
24 attainment for the 2010 SO₂ NAAQS.

25 *I Liheslatura* further finds that GEPA must prepare a State Implementation
26 Plan (SIP) revision to show attainment of the standard within five (5) years of the

1 effective designation date. Furthermore, the adoption of a New Source Review Rule
2 (NSRR) that is part of the requirements of the SIP Revision with the passage of
3 Public Law 36-140 is one of the components of the SIP. The other component for
4 the updated SIP is the adoption of the sulfur content limits on fuel oil.

5 *I Liheslatura Guåhan*, therefore, intends to adopt the sulfur fuel content limits
6 which will be included in the updated SIP in order to administratively satisfy
7 compliance with the USEPA Clean Air Act Part D requirements for Nonattainment
8 Areas for the 2010 SO₂ NAAQS and to avoid sanctions for failing to submit an
9 attainment plan for the 2010 SO₂ NAAQS.

10 **Section 2.** § 1310 of Article 3, Chapter 1, Title 22, Guam Administrative
11 Rules and Regulations, is hereby *repealed* and *reenacted* to read as follows:

12 **“§ 1310. Sulfur Oxides from Fuel Combustion.**

13 (a) Effective July 13, 2023, no person shall burn fossil fuel containing in
14 excess of 15 parts per million (ppm) or 0.0015% percent sulfur by weight except for
15 fuel used in ocean-going vessels and the Cabras Units 1 and 2. Ocean-going vessels
16 that supply electrical power for onshore use or consumption shall not burn fossil fuel
17 for electrical generation containing in excess of 15 ppm or 0.0015%.

18 (b) Effective July 13, 2023, the Cabras Units 1 and 2 shall not burn any
19 fossil fuel containing in excess of 2000 ppm or 0.2% of sulfur by weight.

20 (c) Effective July 13, 2023, the sulfur content of all fuels used at Piti Units
21 7, 8 and 9 and Cabras Units 1 and 2 shall be tested by the current owner/operator.
22 The fuel shall be tested by sampling and analyzing each shipment of fuel to be used
23 at these Units, both before it leaves its location of origin (e.g., Singapore) and after
24 it arrives at the Apra Harbor unloading dock on Guam. The test methods contained
25 in ASTM D2880 shall be used in ascertaining the sulfur content of these fuels.
26 Alternatively, the test methods contained in ASTM D5453 or ASTM D7039 shall

1 be used in ascertaining the sulfur content of Diesel Fuel Oil No. 2 (Ultra Low Sulfur
2 Diesel) and ASTM D4294 or ASTM D2622 shall be used in ascertaining the sulfur
3 content of Residual Fuel Oil No. 6 (Low Sulfur Residual Fuel Oil). Records of the
4 fuel sulfur content shall be maintained for at least five (5) years from the date of
5 testing, in a form suitable for inspections.

6 (d) Effective July 13, 2023, for each day Cabras Units 1 and 2 are operated,
7 the operator shall create and maintain for at least five (5) years, in a form suitable
8 for inspections, a daily record showing the amount(s) (e.g., gallons) and type(s) of
9 fuel (e.g., Low Sulfur Residual Fuel Oil or RFO) used to power Cabras Units 1 and
10 2.

11 (e) By October 31, 2024, the owner/operator of Cabras Units 1 and 2 shall
12 permanently retire Cabras Units 1 and 2.”